

A CITIZENS GUIDE TO THE WILBRAHAM WETLAND BY-LAW



WILBRAHAM CONSERVATION COMMISSION

Reprinted, March, 2021
(Amended 5/27/1997)
(Amended March 8, 2021)

TOWN OF WILBRAHAM

WETLANDS BY-LAW



**The WILBRAHAM WETLANDS BY-LAW was passed into law at
the 1988 Annual Town Meeting on May 4, 1988**

TOWN OF WILBRAHAM WETLANDS BY-LAW

SECTION 1: Purpose

The purpose of this bylaw is to protect the wetlands, related water resources and adjoining land areas of the Town of Wilbraham by controlling activities found by the Conservation Commission (hereinafter "Commission") likely to have a significant or cumulative effect upon the following wetland values: protection of public or private water supply and groundwater, flood control, erosion control, serving as a drainage area for storm water runoff, prevention of water pollution and provision of wildlife habitat (collectively "the interests protected by this bylaw").

SECTION 2: Jurisdiction

Except as permitted by the Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon or alter the following resource areas: upon or within 100 feet of any bank, bordering fresh water wetland, flat, marsh, wet meadow, bog, swamp, isolated wetland or temporary wetland or upon or within 100 feet of any estuary, creek, river, stream, pond or lake, or upon or within 100 feet of any land under said waters or upon or within 100 feet of any bordering or isolated land subject to flooding, or within 100 feet of the 100-year flood line.

The jurisdiction of the Commission over any temporary wetland and the 100 foot buffer around such wetland shall exist only if such wetland has been mapped, after public hearing, by the Commission and if any such temporary wetland is found by a qualified wildlife expert to be vital to the survival of an animal species that uses such wetland exclusively for its reproductive cycle.

SECTION 3: Exceptions

The permit and application required by this bylaw shall not be required for maintaining, repairing or replacing but not substantially changing or enlarging, an existing and lawfully located structure of facility used in the service of the public and used to provide electric, gas, water, sanitary sewer and storm sewer, telephone, telegraph and other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

This bylaw shall not apply to any emergency project as defined in the Wetlands Protection Act, General Laws Chapter 131, Section 40 (hereinafter "the Wetlands Protection Act") and the regulations pursuant thereto or to any mosquito control project authorized by any laws of the Commonwealth. The Commission may exempt by regulation the application of this bylaw to work performed for normal maintenance or improvement of land actively devoted to agricultural use at the time of the application, provided that such regulations are consistent with the provisions applying to agricultural exemptions in the Regulations promulgated under the Wetlands Protection Act.

SECTION 4: Applications for Permits and Requests for Determination

Written applications shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this by-law. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects upon the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this by-law.

The Commission in an appropriate case may accept as the application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission.

Such a request for determination shall contain data and plans specified by the regulations of the Commission. The Commission may in an appropriate case accept such data and plans as are submitted in compliance with the Wetlands Protection Act. Town maps designating wetlands are available at the Conservation Commission office may serve as a guide to the Commission and applicants in determining the location of a protected resource area. However, any resource area found by the Commission to meet the definitions contained in this bylaw shall be subject to the protection of this bylaw.

At the time of an application or request the applicant (other than the Town of Wilbraham) shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act.

The Commission may, if so empowered by any general or special act of the Massachusetts legislature, issue regulations consistent with such statute to require applicants to deposit certain sums to cover costs the Commission may incur in gathering expert information deemed necessary by the Commission to review the application or request.

The Commission shall waive such costs and expenses in a case where the applicant demonstrates to the Commission's satisfaction a financial hardship or the applicant is the Town of Wilbraham. The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency other than the Town of Wilbraham and shall waive them for a Request for Determination filed by a person having no direct or indirect financial interest in the property which is the subject of the request.

SECTION 5: Notice and Hearings

The Commission, in coordination with the Town Engineer and the Board of Selectmen, shall develop a set of pre-submission requirements for the assistance of persons making application before the Commission, a current copy of which shall be on file with the Town Clerk. Any person filing a Request for Determination or a Notice of Intent with the Commission shall complete the filing in accordance with such of those requirements which are necessary as determined by the Commission, the Town Engineer or the Conservation Enforcement Officer. The Commission reserves the right to ask for any additional information it deems necessary to evaluate a project.

The Commission shall hold a public hearing on an application or request for determination within twenty-one days of its receipt. Copies of the application or request for determination shall be sent at the same time, by certified mail or hand delivery, to the Board of Selectmen, the Planning Board, the Town Engineer, the Town Planner, the Building Inspector and the Board of Health. The Commission shall provide written notice of the hearing, at the expense of the applicant, five working days prior to the hearing in a newspaper of general circulation in the community.

Any person filing an application or a request for determination with the Commission at the same time shall give written notice thereof, by mail or hand delivery, to abutters of the land to their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters free of charge. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall issue its decision or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act.

The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in the second paragraph of this Section 5.

The Commission shall adopt by regulation a procedure providing for the coordination of its activities with those of other town boards which also assert or may thereafter assert jurisdiction over the same parcel of land.

SECTION 6: Permits Determinations and Conditions

If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the interests protected by this bylaw and are within the jurisdiction established by this bylaw, the Commission, within 21 days after the close of the hearing, shall issue or deny a permit for the activities requested. If the Commission issues a permit, it shall impose conditions which the Commission deems necessary or desirable to protect those interests, and all activities shall be performed in accordance with those conditions. If the Commission determines that the activities which are the subject of the application are not likely to have a significant or cumulative effect upon the interests protected by this By-law, the Commission shall issue a permit without conditions within 21 days after the public hearing.

Failure by the Commission to take any action within 30(thirty) days after the close of a hearing at which the applicant has produced all the required information shall be deemed to be finding by the Commission that, in the case of a Request for Determination, the area is not subject to this By-law or, in the case of an application, the activities which are the subject of the application will not have a significant or cumulative impact upon the interests protected by this bylaw. Such procedure shall apply only to areas of Commission jurisdiction that exceed that established under the Wetland Protection Act.

The Commission is empowered to deny a permit for failure to meet the requirements of this by law; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the interests protected by this Bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given by the Commission to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A permit shall expire three years from the date of issuance, and all work shall be completed prior to expiration. The Commission may, upon good cause shown, extend a permit for an additional one year period.

For good cause the Commission may revoke or modify a permit issued under this bylaw after notice to the holder of the permit, notice to the public, abutters, and town boards pursuant to Section 5, and public hearing.

The Commission in an appropriate case may combine the permit or other action on an application issued under the 'bylaw with the Order of Conditions issued under the Wetlands Protection Act.

No work proposed in any application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds, or, if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies, by the holder of the permit or, if provided in regulations of the Commission, by the Town of Wilbraham and until the holder of the permit certifies in writing to the Commission that the permit has been so recorded or the Town of Wilbraham has recorded said permit.

SECTION 7: Preacquisition Violation

Any person who purchases, inherits or otherwise acquires real estate upon which work has been performed in violation of the provisions of this by-law or in violation of any order issued pursuant to this by-law shall forthwith comply with any such order or restore such land to its condition prior to any such violation, provided, however, that unless the violation is found by the Commission, after notice and hearing, to pose a substantial and material threat to the interests protected by this by-law, no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired by such person and the order of conditions which is being violated or any enforcement order relating to the violation was appropriately recorded.

SECTION 8: Regulations

The Commission shall prior to January 1, 1989 adopt regulations needed to implement the provisions of this by law. Said regulations shall be promulgated with the advice and assistance of a technical advisory committee to consist of nine persons: One member of the Conservation Commission chosen by the Conservation Commission; one member of the Board of Selectmen chosen by the Board of Selectmen; Town Counsel; Director of Public Works; one with expertise in the field of wildlife biology; one with expertise in the field of wetland science; one person who is a local member of the Massachusetts Homebuilders Association; one person who has expertise as a general contractor; and one person who is a member of the Massachusetts Audubon Society. Prior to the adoption of said regulations, the Commission shall hold at least two public hearings duly advertised and publish a synopsis of the regulations in a paper of general circulation at least 30 days before implementation. Unless otherwise stated in this by law or in the rules and regulations promulgated under this by law, the definitions, procedures and performance standards of the Wetlands Protection Act and associated Regulations, 310 CMR 10.00, in effect as of the effective date of this bylaw, shall apply. The Commission shall formally adopt such regulations by January 1, 1989. No regulation adopted by the Commission shall have the effect of imposing more stringent definitions , procedures and performance standards than those issued under the Wetlands Protection Act unless the Commission first makes a written finding setting forth the basis for the adoption of more stringent standards and, prior to any public hearing on such regulations, expressly notifies all town boards entitled to receive notice of a public hearing of its intention so that such other boards may have an opportunity to participate in the drafting of such rules. Such regulations shall not expand upon the jurisdiction granted to the Commission under this bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this By-law.

SECTION 9: Burden of Proof

In general, the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not harm the interests protected by this By-law. As to activities which may impact isolated wetlands and temporary wetlands which are not also subject to the Commission's jurisdiction under the Wetlands Protection Act, the Commission shall not require that the applicant prove that the proposed alteration will not have a cumulative effect on the interests protected by this by-law but shall require only that the applicant demonstrate that the proposed activity will not have a significant effect on the interests protected by this by-law.

SECTION 10: Definitions

The following definitions shall apply in the interpretation and implementation of this By-law.

SECTION 10.1 Alter: shall include, without limitation, the following actions when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- A. Removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns of surface and subsurface water or flood retention characteristics;
- C. Drainage or other disturbance of water level of water table;
- D. Dumping, discharging or filling with any material or in any manner which may degrade water quality or interfere with any of the interests protected by this Bylaw;
- E. Driving of piles, erection of buildings or structures of any kind;
- F. Placing of obstructions whether or not they interfere with the flow of water;
- G. Destruction of plant life, including cutting of trees;
- H. Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water

SECTION 10.2 Applicant shall mean a person giving notice of intention to build, remove, fill, dredge or alter or making a request for determination.

SECTION 10.3 Bank , bordering fresh water wetland, flat, marsh, wet meadow. bog, swamp, estuary, creek, river , stream, pond, lake and bordering and isolated land subject to flooding: shall, unless otherwise defined in this By-law, have the same meaning as in the Wetlands Protection Act and the regulations thereunder.

SECTION 10.4 Person: shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agencies, public or quasi-public corporations or bodies, the Town of Wilbraham, and any other legal entity, its legal representatives, agents or assigns.

SECTION 10.5 Isolated wetlands: are areas of wetland vegetation (as defined in §10.3 of this by-law) which are subject to flooding and consist of isolated depressions or closed basins which serve as a ponding area for run off or high ground water and which remain wet on a year-round basis except for extended dry periods. Such areas must be at least 400 square feet in area and may include kettle holes and bogs.

SECTION 10.6 Temporary Wetlands: are those areas of at least 400 square feet in area which are periodically flooded on a purely seasonal basis by high ground water or run-off and include vernal and autumnal ponds. Prior to exercising jurisdiction over any temporary wetland which is not also subject to the Commission's jurisdiction under the Wetlands Protection Act, the Commission shall publish the location of such areas on a map, after notice and hearing. No such areas not already under the Commission's jurisdiction under the Wetlands Protection Act shall be subject to the Commission's jurisdiction unless a qualified wildlife professional has determined that the area is vital to the survival of a species of animal which uses that area exclusively in its reproductive process.

SECTION 10.7 Significant Effect: an activity has a significant effect on the interests protected by this bylaw if such activity has a measurable impact on a resource area covered by this bylaw and tends to reduce the capacity of that resource area to support or sustain the interests protected by this bylaw.

SECTION 10.8 Cumulative Effect: an activity has a cumulative effect on the interests protected by this by law if such activity, added to or in conjunction with a similar activity which has occurred or has been proposed and which affects the same resource area, has a measurable impact on a resource area covered by this bylaw and tends to reduce the capacity of that resource area to support or sustain the interests protected by this bylaw. The Commission shall have the burden of proving by a preponderance of credible evidence that the activity has a cumulative effect on the values protected by this by law.

SECTION 10.9 Other Definitions

The Commission may adopt additional definitions not inconsistent with Section 10 in its regulations promulgated pursuant to Section 8 of this Bylaw.

SECTION 11 Security

As part of a permit issued under this Bylaw, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed here under be secured wholly or in part by a proper bond or a deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the Town of Wilbraham;

In addition or in the alternative, the Commission may accept as security a conservation restriction, easement or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land) by the owner of record to the benefit of the Town of Wilbraham.

SECTION 12 Enforcement

The Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

Any person who violates any provision of this Bylaw or any condition of a permit issued pursuant to it shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense.

If the Town of Wilbraham has adopted a comprehensive "ticketing" program based on General Laws Chapter 40, §21D, the Commission shall adopt such program through its regulations. If such a program has not been adopted by June 30, 1989, the Commission may thereafter elect to enforce this by law pursuant to Mass. Gen. Laws Ch. 40, §21D, and the Chairman of the Commission or the Town Conservation Enforcement Officer, if one has been appointed, may enforce this by law under the provisions of that section.

Upon petition of the Commission, the Board of Selectmen and Town Counsel may take such legal action as may be necessary to enforce this Bylaw and permits issued pursuant to it.

SECTION 13 Appeals

A decision of the Commission may be appealed by any person aggrieved thereby in the following manner:

1. Such person may, within 10 days of the decision, request that the matter be settled through a mediation process conducted by a disinterested environmental professional who is mutually agreed upon by the Commission and the aggrieved party. If no such professional can be agreed upon, then one shall be appointed by the chairman of the Conservation Law Foundation. Once the aggrieved party and the Commission agree to such procedure the results thereof shall be binding on both parties. An applicant whose application involves a total parcel size of less than two acres (including all upland areas not under the jurisdiction of the Commission) and an abutter to the property which is the subject of the application may require that the Commission agree to such procedure. Such professional shall render a decision within 30 days of the commencement of the mediation proceedings unless the professional requests additional information not in the control of either party. The mediator shall determine how the costs of the proceeding will be allocated between the parties. The decision of the mediator shall constitute a final decision which may be enforced in any court of competent jurisdiction with the costs of such enforcement procedures to be borne by the party who has refused to comply with such order. Such procedures shall comply with the rules of the American Arbitration Association to the extent not otherwise agreed upon; or
2. The decision shall be reviewable in the Superior Court in an action filed within 60 days thereof in accordance with G. L. c. 249, Section 4, provided that no such appeal may commence prior to a final decision by the Department of Environmental Quality Engineering on any matter which is subject both to this bylaw and the Wetland Protection Act and which has been appealed to that Department.

SECTION 14 Relation to Wetlands Protection Act

This by law is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act and regulations thereunder.

SECTION 15 Legal Rendering by Court

The invalidity of any section or provision or this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any order of conditions which has previously become final.

SECTION 16 Rules for Hiring Outside Consultants under G.L. CH. 44 §53G (adopted 3/8/2021)

Purpose As provided by G.L. Ch. 44 §53G, the Wilbraham Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. Such services shall be deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of: the Wetlands Protection Act (G.L. Ch. 131 §40), the Wilbraham non-zoning wetlands bylaw, Conservation Commission Act (G.L. Ch. 40 §8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. The Conservation Commission may also impose fees for other consultant services related to application review or permit conditioning or monitoring under any of the above-referenced laws.

TOWN OF WILBRAHAM WETLANDS BY-LAW REGULATIONS



**Reprinted March, 2021
(Amended May 27, 1997)
(Amended March 8, 2021)**

TOWN OF WILBRAHAM WETLANDS BYLAW REGULATIONS

PREAMBLE

These regulations are promulgated under the authority granted to the Conservation Commission (hereinafter "Commission") in Section 8 of the Wilbraham Wetlands Bylaw, passed at the 1988 Annual Town Meeting on May 4, 1988. The Commission was required to develop regulations by January 1, 1989. These regulations encompass the general rules regarding activities in wetlands as well as a procedure for coordinating wetlands-related actions among Town boards that may have an interest in the same land parcel, establishing fees for requests for determinations and applications to alter wetlands and the development of a pre-submission checklist for the guidance of applicants.

These regulations have been reviewed and commented upon by an Advisory Group established under Section 8 of the Bylaw. That group has held two public meetings at which all or a part of the regulations drafted so far were discussed. Two formal public hearings were held on the final proposed regulations on December 21, 1988 and February 7, 1989 and the public input from those hearings was taken into account here.

Section 8 of the Bylaw states that the Commission shall operate under the then-existing regulations of the Department of Environmental Quality Engineering (now the Department of Environmental Protection, "DEP") except to the extent modified in the Commission's regulations or in the Bylaw. For this reason we have adopted the numbering system employed by the DEP in its regulations, expanding those numbers where necessary to discuss matters peculiar to the local Bylaw, such as for isolated wetlands and temporary wetlands. The presumptions and performance standards for the resource areas defined in the Wetlands Protection Act are identical to those under the DEP regulations which were in effect as of May 4, 1988 and are not duplicated in this draft even though one must make ongoing textual amendments to the DEP regulations to place them into the local context.

GENERAL REGULATIONS

10.01 Introduction and Purpose

10.02 Statement of Jurisdiction

- (1) Areas subject to protection under the bylaw.
- (2) Activities subject to regulation under the bylaw.

(a) Maintenance of Storm Sewer and other Public Facilities

The Bylaw, in Section 3, provides exceptions from the Bylaw's otherwise prevailing filing requirements for the maintenance of listed structures which include storm sewers. For the purposes of this regulation "storm sewers" shall include retention and detention basins which are in any way connected with an approved storm drainage system. Thus, routine maintenance of these areas will also be subject to the exemption.

The requirement for advance notification for maintenance of existing public utility devices may be met by the filing with the Commission of a letter of intent signed by the public agency responsible for the maintenance of such structures. If there is a plan for periodic maintenance, this will be submitted to the Commission. If maintenance is on an as-needed basis, the letter should so state.

The agency must also agree in the letter to meet the performance standards for resource areas under the Wilbraham Wetlands Bylaw and the State Wetlands Act. The agency must also indicate its intention to confer with the Commission if any question of the interpretation of the performance standards arises.

(b) Private Septic Systems

The Commission believes that existing private septic systems fall under the exception in Section 3 of the Bylaw. Thus, as for the maintenance or reconstruction of such facilities, the Commission should be notified in writing but no formal filing need be made. If the work is to be performed within 100 feet of any resource area defined in the Bylaw, the performance standards relative to such resource area must be observed. This applies only to existing septic systems. New systems installed within 100 feet of a resource area must be approved by the Commission.

(c) Plan of Maintenance

Whenever the Commission requires the construction of some sort of structure or facility (such as retention and detention basins) that may require periodic maintenance in order to assure its continued proper functioning, the Commission shall, in its orders of conditions for that project, require the applicant to submit an acceptable maintenance plan for that structure or facility. Compliance with the maintenance plan, whether undertaken by the Town or a homeowner's association, will be deemed to comply with the performance standards under the Bylaw.

10.03 General Provisions

10.04 Definitions

10.05 Procedures

- (1) Time Periods
- (2) Actions by Commission
- (3) Fees

All fees are in addition to the fees required under the Wetlands Protection Act and any fee required for newspaper advertising. The Applicant will be billed directly for the Legal Notice that will be drafted by the Commission and sent to a local newspaper for publication.

- a. Fees for a Request for Determination: \$25.00.
 - b. Fees for an application (Notice of Intent; such a notice is required only if the proposed activity will actually affect a resource area.)
 - (1) \$35.00 for minor projects involving alterations to areas on an approved lot where a certificate of occupancy has been issued prior to the application;
 - (2) \$50.00 per acre for any proposed residential subdivision which is being reviewed for roadway or other prebuilding alterations (including acreage both within and outside of any resource area or the buffer zone);
 - (3) \$60.00 for a permit for any approved residential building lot for which a certificate of occupancy has not been issued at the time of application and upon which lot any activity which will affect a resource area will be conducted (such activity may be in the buffer zone or the resource area itself);
 - (4) \$400.00 plus \$100 per unit for each multiple dwelling structure within a resource area or within 100 feet of the resource area;
 - (5) \$500.00 for each commercial or industrial project that involves resource areas or buffer zones plus \$1.00 per sq. ft. of wetland disturbed plus \$0.04 per sq. ft. of land subject to flooding or buffer zone disturbed.
- (4) Public hearings by Commission
 - (5) Security for Compliance with Conditions

a. General

Section 11 of the Bylaw authorizes the Commission to require as a part of its order of conditions for a project that the obligations set forth in the orders be secured "wholly or in part by a proper bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the Town of Wilbraham". The Commission will generally require such security when the project involves the construction of storm systems which drain into resource areas, the construction of retention or detention basins, any filling of a resource area or any other situation where activities will be conducted in such proximity to a wetland area that there is a reasonable risk of harm to the resource area if the Order of Conditions is not complied with.

There are two levels of concern which the Commission may have with a project. The first is whether the project will actually be completed in accordance with the submitted plans. Thus the security amount should be sufficient to assure completion by the Town of any projects which are abandoned by the applicant. The cost of such projects can be reasonably anticipated by the applicant and such cost estimates from the applicant will be required as a part of the submission of an application. The Commission will then confer with the Town Engineer and the Planning Board to ascertain whether the suggested amount is adequate. In the event that the Planning Board, pursuant to its powers under the Subdivision Control Law, requires a security amount for the same aspect of the project as the Commission, the applicant may request the Commission to reduce the amount of the security which the Commission has requested provided that the Commission is assured that a commensurate amount will be provided in the security for the Planning Board. In submissions which are contemporaneous to both the Commission and the Planning Board, the Commission and the Planning Board shall determine the proper security amount for the completion of the project and the applicant may satisfy that requirement with one security amount.

The second concern of the Commission is with the potential damage to resource areas that can occur during and after the construction process through unintended events such as severe rainstorms or an error by the operator of heavy construction equipment. The amount of security needed to repair such damage is much more difficult to estimate. Such damage commonly occurs, for example, when sediment washes into a wetland through insufficient hay bale barriers and must be removed by hand. The Commission will review the facts of each application to determine to what extent security for this purpose is required. Factors such as proximity to the wetland of proposed activities, slope of the project, the type and numbers of heavy construction equipment to be used on the site and general hydrological orientation are typical elements that the Commission will review. The Commission will accept as advisory input suggestions from environmental consultants representing the applicant as to the proper security amount for this purpose in each case.

b. Means of Complying with the Security Requirement

An applicant who, as part of the Order of Conditions, is required to secure its performance pursuant to Section 11 of the Bylaw may comply in the following fashion. The applicant may choose either of the following options and may substitute one option for the other with advance written notice to the Commission:

- i. By a proper performance bond, sufficient in the opinion of the Commission to secure performance of any actions deemed necessary by the Commission to mitigate impact on resource areas and to repair any damage that may occur during the construction process;
or
- ii. By a deposit of money or negotiable securities, sufficient in the opinion of the Commission to secure the performance described in subsection (a) above.

c. Conservation Restrictions, Easements, Etc.

The Commission is also authorized under Section 11 to accept as security a conservation restriction or easement or other covenant running with the land. This option may be employed, at the Commission's discretion, when sensitive parcels adjacent to the development are not proposed to be altered but could in the future be the subject of a request for alteration. Such a restriction would protect those areas in perpetuity and thereby further the goals of the Bylaw. It should be noted that such conveyances are exclusively the choice of the applicant and that the Commission may not require any such conveyance as a formal requirement of the orders of condition.

(6) Appeals Procedure

- (a) Mediation Procedure**
- (b) Appeal to Superior Court**

10.06 Emergencies

10.07 Compliance with Massachusetts Environmental Policy Act

10.08 Enforcement Procedures

10.09 Severability

10.10 Effective Date

The bylaw is effective as of October 7, 1988 and any Request for Determination or Notice of Intent filed in the Commission Office and date-stamped on or after that date will be subject to the bylaw and to such of these regulations as have been properly adopted by the Commission.

Regulations for Resource Areas and Buffer Zones

10.51 Introduction

10.52 Purpose

10.53 General Provisions

10.54 Bank (Naturally Occurring Banks and Beaches)

[Identical to DEP Regulations]

10.55 Wetlands (Wet Meadows, Marshes, Swamps and Bogs)

A. Bordering Vegetated Wetlands

- (1) Preamble**
- (2) Definition, Critical Characteristics and Boundary**
- (3) Presumptions**
- (4) General Performance Standards**

[Text Identical to DEP Regulations]

B. ISOLATED WETLANDS

(1) Preamble

Isolated Wetlands are defined in Section 10.05 of the bylaw. These are areas of wetland vegetation (as defined in the state act and the DEP regulations) that do not border on creeks, rivers, streams, ponds and lakes. Isolated wetlands are likely to be significant to public or private water supply, to ground water supply, to flood control, to storm damage prevention, to prevention of pollution and to wildlife habitat.

Such wetlands may be found either in areas with low flat topography or below side hill seeps or in depressions and holes which are the result of former glacial activity (also known as kettle holes). These areas provide for the temporary storage of water which results from runoff, rising ground water or where ground water breaks out of a slope forming a side hill seep. Alteration of these areas can result in the lateral displacement of retained water into contiguous properties, which may result in damage to said properties.

Isolated wetlands are areas where ground water discharges to the surface either by a rising water table or from a side hill seep. Under some circumstances, surface water discharges to the ground water in these areas, particularly where they are underlain by pervious material. Contaminants introduced into such areas, such as septic system discharges, road salts, pesticides or herbicides, find easy access into the ground water or neighboring wells.

Where such areas are underlain by pervious material covered by a mat of organic peat or muck, they are likely to be significant to the prevention of pollution.

Isolated wetlands may be essential breeding sites for certain amphibians which require isolated areas which contain water in the spring and/or summer, and are free of fish predators. Many reptiles, birds and mammals, also depend upon such isolated wetlands for food, shelter and breeding areas.

(2) Definition, Critical Characteristics and Boundary

a. Definition

Isolated wetlands are areas of wetland vegetation which are subject to flooding and which consist of isolated depressions or closed basins and which serve as a ponding area for run off or high ground water. These areas remain wet on a year-round basis except for extended dry periods. They also include kettle holes too small to be called ponds or lakes.

b. Critical Characteristics

- (i) **Topography:** Isolated wetlands may occur in a depression or closed basin in otherwise flat topography. In these areas water may pool above the surface at least once a year or may be contained in the top 24 inches of soil. For the purposes of the Bylaw, the Commission will presume that any area which meets the vegetative criteria for an isolated wetland meets the wetness criteria. An applicant may rebut this presumption by introducing clear and convincing evidence that water (or chemical evidence of water, such as greying or soil mottling) does not occur within the top 24 inches of soil. Some isolated wetlands occur downslope of side hill seeps, depending on the topography, soils and water regime.
- (ii) **Vegetation:** The isolated wetland should display typical wetland vegetation as described in the State Act and the DEP regulations for freshwater wetlands.
- (iii) **Soils:** The soils are annually saturated as specified for freshwater wetlands under the DEP regulations. Hydric soils may be used by the Commission to locate an isolated wetland if the surface vegetation has been altered or removed.

C. Boundary and Size

The boundary of an isolated wetland shall be determined by one or more of the following, depending on the availability of information. Where more than one method is possible, that method resulting in the largest area shall be used.

The boundary of the isolated wetland shall be:

- (i) the line enclosing that area having a vegetative cover consisting of 50% or more of freshwater species, as defined in the State Act and DEP regulations; or
- (ii) the line enclosing the largest observed or recorded area of water confined in said area

In any area that borders or is within 100 feet of the 100 year flood line or where an isolated wetland exists in an area of low relief, the Commission may take into account the area calculated to be inundated by runoff from the 100-year storm in determining the extent of its jurisdiction over the temporary wetland area.

The surface area of the wetland must measure at least 400 square feet by any one of the above calculations.

(3) Presumption

Where a proposed activity involves removing, filling, dredging or altering of an isolated wetland, the Commission shall presume that such an area is significant to the respective interests set forth in Section 1 of the bylaw. This presumption is rebuttable and may be overcome only upon a clear showing that said land does not play a role in said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

It is important to note that this presumption is not the same as for determining whether a proposed activity will have a "significant" effect on wetland values. That is a separate evaluation which is conducted by the Commission on the proposed activity. The presumption of significance of the resource area is based upon the Commission's finding that any such resource area probably contributes to the support and maintenance of the interests protected by the Bylaw when in its unaltered state.

It should be noted that the standard for "cumulative" impacts does not apply to isolated wetland alterations to the extent that such wetlands are not covered also by the State Wetlands Act. Thus, in terms of proposed activities, the applicant need only demonstrate that the proposed activity does not have a significant impact on the wetland area.

(4) General Performance Standards for Isolated Wetlands

A proposed project which may result in alteration of an isolated wetland shall not result in the following:

- (a) Flood damage due to filling which causes lateral displacement of water that would otherwise be confined within said area.
- (b) An adverse effect on public and private water supply or ground water supply.
- (c) An adverse effect on the capacity of said area to prevent pollution of the ground water, where the area is underlain by pervious material which in turn is covered by a mat of organic peat or muck.
- (d) An impairment of its capacity to provide wildlife habitat.

Notwithstanding the above, no project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species as identified on the Natural Heritage and Endangered Species Estimated Habitat Maps on file with the Commission and identified under section 10.59 ('Rare Species') of the Regulations to the state Wetlands Protection Act (310 CMR 10.00).

10.56 Land Under Water Bodies and Waterway (under any Creek, River, Stream, Flat, Pond or Lake)

- (1) Preamble
- (2) Definition, Critical Characteristic and Boundary
- (3) Presumption
- (4) General Performance Standards

[Identical to DEP regulations]

10.57 Land Subject to Flooding (Bordering and Isolated Areas)

- (1) Preamble
- (2) Definition, Critical Characteristics and Boundary
- (3) Presumption
- (4) General Performance Standards

[Identical to DEP Regulations]

10.58 Variance

10.59 Rare Species

10.60 WILDLIFE HABITAT EVALUATIONS

One of the major purposes of the Wilbraham Wetlands Bylaw is the preservation of wildlife habitat which resource areas provide. The Commission must evaluate any activity which may have a significant or cumulative effect upon wildlife habitat (for temporary wetlands, only the "significant" standard applies). The Commission must have adequate information in order to be able to evaluate the impact of any proposed activity on wildlife habitat. This would include a detailed summary of the existing wildlife habitat of a site with the application for a proposed alteration to a resource area or buffer zone of a resource area.

(1) Content of Wildlife Assessment

Any Notice of Intent filed under the Bylaw for a project which involves two or more acres containing a resource area within its boundaries (total area irrespective of the resource area or buffer involved) or any project which proposes directly to alter a resource area must contain a description of the wildlife habitat which is presently being supported by the resource area in question. The Commission may require smaller projects involving only buffer alterations to supply the same level of detail if the Commission determines that the smaller project's implementation may have a significant or cumulative impact on wildlife habitat. The following wildlife issues must be addressed:

- a. A description of the habitat provided by the resource areas for the following species:
 1. Any amphibian that may use the resource area or the surrounding buffer zone as a food source, shelter or in any other way its life cycle including, but not limited to, the following:

Jefferson's salamander, blue-spotted salamander, spotted salamander, spring salamander, four-toed salamander, eastern spadefoot toad, wood frog and spring peeper.
 2. Any reptile that may use the resource area or surrounding buffer zone in its life cycle, including but not limited to the following:

Spotted turtle, wood turtle, painted turtle, ribbon snake, eastern box turtle and northern water snake
 3. Any bird species that may use the resource area or its surrounding buffer zone as a food source, shelter or nesting site in its life cycle, including, but not limited to, the following:

Wood duck, water thrush, red-winged blackbird, American bittern, yellow-throat and kingfisher
 4. Any mammal that may use the resource area or its surrounding buffer as a food source or for shelter during its life cycle, including, but not limited to the following:

Water shrew, southern bog lemming, mink, muskrat and raccoon
 5. Any fish species that may use the resource area, including but not limited to the following:

Fall fish, brook trout, blacknose dace, brook lamprey and fine-scaled sucker
- b. A catalog of plant species constituting 10% or more of the vegetation in the resource area which in any way serve as habitat or food source for any of the species listed in subsection 1(a) above.
- c. A catalog of the particular features of the resource area and buffer zone. that serve habitat interests, including but not limited to the following:
 - special soil characteristics, e.g., percent cobble, sand, gravel, silt, organic
 - presence of dead trees or snags that serve as habitat, such as perching or nesting sites
 - basking sites, feeding areas and nesting areas for any species listed above
 - presence of shrubs that provide winter cover
 - topographical features, including depressions, sink holes, etc.
- d. A listing of any federal or state-listed special concern, threatened or endangered species which may use the resource area as habitat or which have been recorded at the site.

The applicant should evaluate the resource area and accompanying buffer zone in which the above species range in determining the extent and quality of the wildlife habitat. The Commission seeks to determine what aspects of the resource areas, the buffer and any upland which might reasonably be included in the range of the animals listed are vital to the maintenance of the resource area as wildlife habitat. By "vital" it is meant that the animal population would tend to be reduced if this particular habitat was altered or eliminated. This information should be based on field surveys of the resource area and upland areas by a person formally trained in wildlife biology, having at least a master's degree in wildlife biology or ecological science from an accredited college or university or other competent professional with at least two years of experience in wildlife habitat evaluation.

Applicants that are also required to file a Wildlife Habitat Evaluation that meets the requirements of 310 CMR 10.60(2) and DEP Wetlands Program Policy 88-1 and Wetlands Wildlife Advisory #2 may substitute that Evaluation for the local bylaw evaluation. This would apply to certain alterations of inland banks, inland land under water and inland land subject to flooding. In addition to such evaluations, however, the applicant must also show the relationship of the buffer zone to the resource area habitat as described above in Subsection (a).

If during its inspection of the site prior to the hearing but after the submission of the above listed information the Commission discovers evidence that wildlife issues require further documentation, the Commission will make such an announcement at the hearing and will continue the hearing to provide an opportunity for the applicant to submit the additional required information.

(2) Presumptions

The Commission will presume that any resource area is vital to the wildlife habitat interest which the bylaw seeks to protect. In addition, the Commission will also presume that the buffer zone, if any alteration is proposed there, is also an important facet of the wildlife habitat supported by the resource area itself to the extent that most wildlife species listed in subsections: 1(a) and 1(d) above utilize both the resource area and the surrounding buffer zone in their life cycles. Such presumptions may be overcome by the applicant by showing by preponderance of evidence that the resource area and/or the buffer zone do not in their existing state serve a substantial wildlife habitat interest.

(3) Performance Standards

The applicant must demonstrate by a preponderance of credible evidence that the proposed alteration of buffer and/or resource area will not significantly affect the ability of the wetland to sustain its wildlife habitat role. For the purposes of this provision, the standard will be met only if the applicant can demonstrate that the resource area will continue to support substantially the same quantity and quality of wildlife after the alteration as before. For this purpose the buffer zone and the resource area will be considered together if any species which utilizes the resource area as habitat also utilizes the buffer zone during any part of its life cycle. Destruction of buffer zone habitat which effectively reduces the attractiveness of the resource area as habitat will be considered to be a "significant" impact.

For example, consider a population of amphibians which uses a wetland as habitat and also migrates into or beyond the surrounding buffer area during part of its life cycle. In this case the Commission will evaluate the overall impact of any proposed alteration on the wetland's role as habitat, including any alteration of the buffer zone and its impact on the amphibian population. If the amphibian population is jeopardized as a result of the buffer alterations, the Commission will find that the capacity of the wetland to sustain habitat for that species is reduced. Since the standard for "significant" activities is a "measurable impact" on a resource area, any diminution of species which use the wetland as habitat will be considered a "significant" impact which must be conditioned by the Commission or else prohibited. Applicants should provide sufficient undisturbed buffer around resource areas to accommodate the known vertebrate species that utilize the resource area and the surrounding buffer zone as habitat.

The applicant should also pay special attention to any structure in buffer areas that may impede the migration patterns of wildlife to or from the resource areas. For example, roadways with berms may pose a substantial barrier to salamander migration. Special mitigation measures that will maintain the same level of access during and post construction as before should be documented in the Notice of Intent.

The Town of Wilbraham Wetlands Bylaw Regulations are hereby amended by adding the following as Section 10.70 of said Regulations Effective 2/8/2021

10.70 Rules for Hiring Outside Consultants under G.L. Ch. 44 §53G

Special Account: Funds received pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.

Consultant Services: Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeological and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Commission. The consultant shall be chosen by and report only to the Commission and/or its administrator. The Commission shall be deemed to be the client of the chosen consultant.

Notice: The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

Payment of Fee: The fee must be received prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment, or refusal of payment, shall be cause for the Commission to deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards in 310 CMR 10.00 and the Wilbraham wetlands bylaw or its regulations. An appeal stops the clock on the above deadline; the countdown resumes on the first business day after the appeal is either denied or upheld. A denial for lack of information may be based solely on the lack of the third party consultant review identified as necessary by the Commission. The Commission shall specify in its denial the nature of the information lacking which its chosen consultant would provide, e.g. the questions it needs answered.

Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application.

Appeals: The applicant may appeal the selection of the outside consultant to the Selectboard, who may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Selectboard and a copy received by the Conservation Commission, so as to be received within ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

Return of Unspent Fees: When the Commission's review of a project is completed and an Order of Conditions issued, any balance in the special account attributable to that project shall be returned within 30 days. The excess amount, including interest, shall be repaid to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Commission with appropriate documentation. A final report of said account shall be made available to the applicant or applicant's successor in interest.

10.80 TEMPORARY WETLANDS (TEMPORARY PONDS, VERNAL PONDS)

(1) Preamble

The bylaw provides authority to the Commission to regulate activities in and within 100 feet of temporary wetlands but only if the Commission has published the location of such wetlands on a map (after public hearing) and has made a finding (supported by a qualified wildlife professional) that such area is "vital to the survival of a species of animal which uses that area exclusively in its reproductive process." The Commission will look at the population of any such species in the immediate vicinity of the pond in determining whether an issue of survival is presented. State-listed species will be assumed to be threatened by any destruction of habitat regardless of the 'local' population. The sole thrust of this area of jurisdiction relates to wildlife concerns. Issues of flooding, groundwater pollution and the other non-wildlife issues do not enter into the Commission's consideration of applications for alterations to these resource areas.

Temporary wetlands are usually isolated depressions or closed basins that serve, in most years, as ponding areas for runoff or high ground water that has risen to the surface. They may be found in flood plains or in saddles at the base of slopes. Several of these characteristics may be shared with isolated wetlands. An important distinction, however, is that a temporary wetland does not need to display the typical wetland vegetation profile that an isolated or bordering wetland need display in order to be subject to the Bylaw. Temporary wetlands are by definition, of seasonal duration; accordingly, the degree of wetness necessary for the establishment of a typical wetland plant community does not exist in most cases. If a temporary wetlands does not qualify under the definition of an isolated wetland (see Section 10.55 above) then its contribution to the interests protected by the bylaw must be evaluated only on the basis of whether it provides wildlife habitat for certain species which are obligated by their nature to use the wetland in their reproductive cycle.

The following species are generally acknowledged to require areas such as temporary wetlands for breeding (and are hereafter referred to as obligates):

Ambystoma jeffersonianum (Jefferson salamander)
Ambystoma laterale (blue-spotted salamander)
Ambystoma opocum (marbled salamander)
Ambystoma maculatum (spotted salamander)
Rana sylvatica (wood frog)
Scaphiopus h. holbrooki (Eastern spadefoot toad)
Ambystoma "platineum" (Silvery salamander)
Ambystoma "tremblayi" (Tremblay's salamander)

The documented presence of any of the above species by a qualified wildlife expert in a temporary wetland area otherwise meeting the definition will be deemed conclusive evidence that the area is vital to the survival of an obligate species.

Also the presence of fairy shrimp (Eubrachiopods) will serve as an indicator of a temporary wetland which serves a wildlife interest.

(2) Definition, Critical Characteristics and Boundary

(a) Definition

Temporary wetlands are areas of at least 400 square feet in surface area that are periodically flooded on a purely seasonal basis by high ground water or run-off and include vernal and autumnal ponds and ponds resulting from summer thunderstorm activity. They are used by obligate amphibian species for breeding purposes.

(b) Critical Characteristics

- (i) **Temporality** Temporary wetlands generally fill up during the spring rains and snowmelt, dry up during the summer, and may fill again during the fall rains or during summer thundershowers. An area where water stands on a year-round basis will not be considered to be a temporary wetland (it may be an isolated wetland). The cycle of filling and drying may occasionally miss a year due to dry conditions.
- (ii) **Shape** Temporary wetlands occupy a variety of areas, including shallow, cup-shaped depressions in areas where flooding from nearby waterways or water bodies or rising ground water or side hill seeps may serve to fill them temporarily. Temporary wetlands may also be found in ditch-like areas.
- (iii) **Size** The minimum size of a temporary wetland is 400 square feet, measured on its surface from the most extensive boundary (see Boundary below).
- (iv) **Organic Accumulation** The presence of a well-developed organic layer is a feature of temporary wetlands. These pools have generally existed since the end of the glacial period and will probably continue in their semi-open condition for many more thousands of years unless artificially altered. These pools act as traps for organic matter, especially during the autumn when they trap quantities of airborne leaves. The presence of water-stained leaves in a depression which is otherwise dry is a good indicator that the area temporarily serves to pool water.

(c) Boundary

Because temporary wetlands are dry much of the year, it may be necessary to determine their boundaries using indicators other than pooled water. Further, because the area inundated may vary so widely from year to year, pooled water is not a good indicator of extent. The boundary of a suspected temporary wetland shall be determined using a combination of pooled water, if present, and by the presence of a depression covered by water-stained leaves. Other indicators of the temporary pooling of water, such as the presence of caddis fly cases or fingernail or pea clams, can also be used.

(3) Presumption

The Commission is required to locate temporary wetlands and make a finding that such areas are vital to the above-described obligate species. As a result, any temporary wetland which is the subject of mapping and publication by the Commission is presumed to be vital to the wildlife interest protected by the bylaw. This presumption can be rebutted only by substantial evidence (from a qualified wildlife biologist) that such area is not vital to that concern.

An applicant must demonstrate that the proposed activity does not have a significant effect upon the resource area's ability to support the wildlife interest that the Commission has found to exist, there. The applicant can do this by showing that the project will meet the performance standards set forth below. The 'cumulative' standard for impact evaluation does not apply in the case of temporary wetlands.

(4) General Performance Standards

A proposed project in a temporary wetland shall not result in any impairment of the capacity of the temporary wetland, as well as the area within 100 feet of the mean annual boundary of said temporary wetland, to provide wildlife habitat for any animal which is obligated to use such areas in its reproductive process. Any such project shall not result in any adverse impact on state-listed species which shall be protected under the procedures listed in 310 CMR 10.59.

(5) Mapping Procedures

The Commission may locate temporary wetlands using a variety of methods. The preferred method will be through field surveys conducted by the Commission and volunteers. Once an area is located it will be plotted on the Town Assessors maps. The 1977 Town aerial photographs (scale 1:3990) will be used to plot the pond and landmarks (including evergreen or other major trees shown on the photographs) will be referenced. Where possible, the Commission shall locate landmarks that also appear on USGS topographical maps. Detailed sketch maps of the location of the temporary wetland in relation to other landmarks and features in the immediate vicinity of the temporary wetland shall also be made. The Assessors' Maps will be produced for the public hearing. The Commission may also locate such temporary wetlands using radiometric methods. The commission shall indicate at any public hearing held to document temporary wetlands which method was used to locate each temporary wetland shown.

Applicants submitting professional surveys must show on the plans submitted to the Commission any temporary wetland areas which meet the definition under the bylaw. Evidence (not necessarily presumptive but sufficient to establish a reasonable level of credibility) of the existence of any such temporary wetland may be introduced by any person at a hearing on a Request for Determination or a Notice of Intent and the Commission shall, upon such notice, continue the hearing on a timely basis until the Commission is able to view the site in question.

10.90 Pre-submission Checklist

The following items are generally required when an applicant is filing for a permit to alter a resource area protected under the State Wetlands Act and the Wilbraham Wetlands Bylaw. Exceptions may apply if the total parcel involved (including all upland areas) is two acres or less in area. The Commission may waive any of the items upon the demonstration by the applicant that the item is not relevant to the Commission's review of the proposed alteration. The Commission reserves the right to request additional information, either before or during the hearing, if it deems it necessary for a complete review of the proposed alteration.

General

- Proper fee paid to Town of Wilbraham
- Assessor's map and parcel number
- Street address of project
- Direction of groundwater flow on property, based on SEA or USGS groundwater contour maps
- All abutters within 300 feet of any boundary of the proposed project notified and affidavit of such notice supplied to Commission
- Estimated rare species habitat maps checked; Mass. Natural Heritage signed off on project
- Project staked two weeks prior to hearing
- Wetland flags numbered in order along wetland border

Plans

(a) General

- Current and finalized for hearing
- Stamped by registered professional engineer, architect, landscape architect or land survey
- Required number of copies (8) submitted
- Locus of project shown exactly on plan and on USGS quadrangle sheet and on accompanying street map on a scale not less than 1" = 100' (assessors' maps may be used)
- All wetland flags shown numbered on the plan

(b) Features to be Shown on Plan

- 2' interval contours (existing and future) at project site based on USGS datum (if available)
- Work limit, construction setbacks and vegetated buffer
- Location of temporary erosion control
- 10 year flood elevation
- 100 year flood elevation
- Banks
- All wetlands, water bodies capable of carrying water, ditches and other significant features on or abutting site
- Spring high water mark for all water bodies
- Areas proposed for replication
- All above-ground structures, fuel tanks, roadways, access ways and other physical alterations proposed.
- Proposed maintenance plans for any structures generally requiring periodic maintenance, including, but not limited to, detention and retention basins
- All below-ground alterations and structures, including utility lines, drainage structures, on-site septic systems, wells and storage tanks (fuel and other)
- Private wells on downgradient abutting properties

(c) Technical Data

- SCS soils classification
- Soil borings, sediment analyses, soils stability data
- High groundwater elevations at site (show on plan)
- Quality of groundwater at three sites from the proposed development
- **Groundwater recharge data**
 - A. In wetland areas
 - B. In remainder of project
- **Information on waterways**
 - A. Carrying capacity of stream
 - B. Bottom sediment
 - C. Vegetation within the stream and on its banks in the area of the proposed project
 - D. Water velocities at base flow, mean flow and annual flood flows
 - E. Calculations to prove that velocities will be the same after relocation or channelization as before (where project involves such work)
 - F. erosion and sedimentation control during construction
 - G. Erosion and bank stabilization control plan for post construction
 - H. Water quality at specified points along watercourse (at least on where the waterway leaves the property)
 - I. Proposed time table for construction
- Wildlife Habitat Evaluations
- Trade names, constituents, application rates and frequencies for any pesticides, fertilizers, dust controllers or deicers to be used within resource or buffer areas

Drainage

- Drainage calculations for surface water runoff or predevelopment, development and post development time frames
- Calculations for 10, 20, 50 and 100 year storms
- Construction details of drainage structures (catch basins, swales, retention areas, ditches) (show on plan)
- septic system location and design details (show on plan)

Security Information

- Estimated cost of construction of drainage features shown on plan (including retention and/or detention basins, stormwater outfalls, culverts, bridges, etc.)
- Suggested cost of repairing unintended damage to resource areas as a result of mitigation device failures or equipment operator errors during construction

TOWN OF WILBRAHAM WETLANDS BY-LAW APPLICATION FORMS

IMPORTANT NOTICE WILBRAHAM CONSERVATION COMMISSION

NEW NOTICE REQUIREMENTS FOR WETLANDS HEARINGS

EFFECTIVE DECEMBER 1, 1988 ALL REQUESTS FOR DETERMINATION AND NOTICES OF INTENT MUST COMPLY WITH THE NOTICE REQUIREMENTS ESTABLISHED BY THE WILBRAHAM WETLANDS BYLAW . THE APPLICANT IS REQUIRED TO NOTIFY ABUTTERS WITHIN 300 FEET OF THE PROPERTY WHICH IS THE SUBJECT OF THE APPLICATION OF THE PUBLIC HEARING . THIS MUST BE DONE BY MAIL OR HAND DELIVERY. THIS MAY BE DONE AFTER THE CONSERVATION COMMISSION HAS MAILED TO THE APPLICANT THE LEGAL NOTICE FOR THE HEARING. THE APPLICANT NEEDS TO SUPPLY ONLY A COPY OF THE LEGAL NOTICE TO THE ABUTTERS.

APPLICANTS MUST CERTIFY IN WRITING TO THE CONSERVATION COMMISSION ON FORM A, ATTACHED, THAT THIS HAS BEEN DONE BEFORE THE HEARING UNDER THE LOCAL BYLAW CAN TAKE PLACE.

THE INFORMATION ON ABUTTERS CAN BE OBTAINED AT THE ASSESSORS OFFICE.

APPLICANTS MUST ALSO FILE SEPARATE APPLICATIONS FOR REQUESTS OR NOTICES OF INTENT UNDER THE LOCAL BYLAW . THE ATTACHED FORM B WILL SERVE FOR THIS PURPOSE. PLEASE FILL OUT THE STANDARD STATE DOCUMENT AND ALSO FILE WITH THE COMMISSION THE FORM B.

THANK YOU

FORM A

CERTIFICATION OF NOTIFICATION OF ABUTTERS

The Applicant below hereby certifies to the Wilbraham Conservation Commission that he/she has notified all abutters within 300 feet of the property to which the Request or Notice pertains. Such notice was in the form of regular mail or hand delivery to the said abutters. The Applicant understands that if proper notice was not made, no hearing under the Wilbraham Wetlands Bylaw may be held.

Date of Request or Notice: _____

Name(s) of Applicant(s) (print): _____

Date Notice was given to abutters: _____

Method of Notice: Hand delivery _____

 Regular Mail _____

Signature of Applicant: _____

Date: _____

FORM B

Combination of State and Wilbraham Filing

To the Wilbraham Conservation Commission

The undersigned Applicant has applied to the Wilbraham Conservation Commission for a Request for Determination/Notice of Intent (circle appropriate one) for activities on a parcel at

_____ hereby requests that the Wilbraham Conservation uses the State documents as the basis for the application under the Wilbraham Wetlands Bylaw and combine the hearing on the state and local matters. The Applicant understands that the Conservation Commission may require additional information to be submitted under the Wilbraham Wetlands Bylaw.

Name of Applicant (print): _____

Date of Application: _____

Signature of Applicant: _____

Approved by Conservation Commission: _____